THE HON'BLE MR JUSTICE GODA RAGHURAM

WRIT PETITION NO : 17841 of 2005

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TUESDAY, THE SIXTEENTH DAY OF AUGUST
TWO THOUSAND AND FIVE

Between:

M/s. Feno Fiber Ltd., Survey No.1134, Thanakalan, Yedapally Mandal, Nizamabad District, rep. by its Managing Director, Sri H. Gangadhar, S/o. H. Gangaram, R/o. Nizamabad.

..... PETITIONER

AND

1. The Employees Provident Fund Appellate Tribunal, rep. by its Presiding Officer, Nehru Place new Delhi-110 019.
2 Employees Provident Fund Organization, rep. by Central Board of Trustees, Bhavishyamidhi bhavan-14, Bhikaji Cama Place, New Delhi- 110 066.
3 Assistant provident Fund Commissi;oner (C&R), Employees Provident Fund organization, Sub Regional Office, Nyalkal Road, Nizamabad-503 001.

.....RESPONDENTS

The Court, at the stage of admission, made the following:

Oral order:-

Heard the learned counsel for the petitioner-Mr. A.K. Jayaprakash Rao and the learned standing counsel for the respondents-Mr. R.N. Reddy.

The petitioner is aggrieved by the order dated 27-07-2005 in A.T.A.No. 446 (1) of 2005 of the 1st respondent--Employees' Provident Fund Appellate Tribunal, New Delhi.

The facts, in brief, are that the petitioner is a company registered under the Companies Act, 1956. According to the petitioner, it was established in the year 1986 and closed its operations in February, 2003. Admittedly, the petitioner, an industry, could not survive the market competition. According to the petitioner, from 1998 there being a recession in the market, the petitioner could not pay salaries to its employees. It also defaulted in the employees provident fund dues during the period March, 1999 to June, 2002. Eventually, a notice dated 17-07-2003 was issued to the petitioner intimating failure in remitting provident fund contributions/pension fund contributions/administrative charges/employees' deposit linked insurance contributions/employees/ deposit linked insurance administrative charges for the period March, 1999 to June, 2002; and intimating the petitioner the liability to damages under Section 14B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (Act 19 of 1952) (for short 'the Act'). According to the petitioner, it did not receive the notice, as the industry was closed. It, however, does not appear to have made any arrangements for receipt of the several statutory notices that are the

usual occurrences on an industry and in particular an industry registered under the Companies Act. In any case as the notice was sent to the company to its registered address, there is a deemed service of notice, in law. The order dated 05-09-2003 also states that the notice dated 17-07-2003 was acknowledged by the petitioner on 25-07-2003.

Be that as it may. The Regional Provident Fund Commissioner concerned, by the proceedings dated 05-09-2003, determined the damages leviable from the petitioner under Section 14B of the Act in an amount of Rs.5,46,524-00 for the delayed remittances during the period March, 1999 to June, 2002. Further, by the same order dated 05-09-2003, the interest payable by the petitioner under Section 7Q of the Act was also intimated to be at 12% per annum simple.

The petitioner, as against the determination of damages and the interest, preferred an appeal to the Central Board of Trustees (for short the 'CBT') routed through the Provident Fund Commissioner concerned seeking waiver of the damages and the interest, in purported exercise of powers available to the CBT under the second proviso to Section 14B of the Act. Meanwhile, the petitioner also filed a writ petition challenging the levy of damages and interest, which was disposed of by this court directing expeditious disposal of the petitioner's representation, by the CBT.

Eventually, by the proceedings dated 18-03-2005, the decision of the CBT was communicated to the petitioner recording that the CBT having examined the petitioner's representation found no justification or warrant for granting waiver. Insofar as waiver of damages is concerned, the CBT found the petitioner ineligible for grant of the waiver and with regard to the interest, no provision existed for waiver of interest at all. The decision of the CBT as conveyed to the petitioner set out, in brief, the above reasons for the rejection of the petitioner's representation.

Aggrieved thereby, the petitioner preferred an appeal to the 1st respondent—The Employees' Provident Fund Appellate Tribunal. The 1st respondent, by the impugned order dated 27-07-2005 rejected the petitioner's appeal on a plurality of grounds viz., (a) that the order dated 05-09-2003 of the primary authority, the Provident Fund Commissioner was not vitiated by the violation of principles of natural justice, as a show cause notice was duly issued, but was not availed of

by the petitioner for what-ever reasons; (b) that as the petitioner was not a sick industrial company in respect of which a scheme for rehabilitation has been sanctioned by the Board for Industrial Financial Reconstruction (for short 'the BIFR') as envisaged by Section 14B of the Act, the petitioner was not entitled to the exercise of discretion by the CBT for waiver of the damages; and (c) that during the period for which the damages and interest were levied i.e., March, 1999 to June, 2002, the petitioner was not even registered with the BIFR and, therefore, no reason is even advanced in support of the delayed remittances of the provident fund and other dues.

Learned counsel for the petitioner Mr. A.K. Jayaprakash Rao would strenuously contend that the order dated 05-09-2003 of the primary authority is vitiated for violation of the principles of natural justice; the order of the CBT rejecting the petitioner's representation for waiver is vitiated for a similar reason viz., not affording the petitioner a reasonable opportunity of atleast a personal representation before disposal of its representation; and (c) that the order of the appellate authority is vitiated for irrational consideration of its appeal grounds.

None of the above contentions merit acceptance by this court. As is apparent from the order of the Provident Fund Commissioner dated 05-09-2003, a notice was addressed to the petitioner on 17-07-2003, which was acknowledged by it on 25-07-2003. If the petitioner wanted an adjournment of the hearing of the Section 14B proceedings, the petitioner should have specifically sought one. Absence is not a mode of representation. When statutory proceedings are initiated against a citizen, it is the bounden duty of the citizen to respond, lest he incurs the potential liability to bear the consequences for his non-representation. Statutory proceedings do not go into eclipse on a citizen's disinclination to participate in the proceedings. This principle is too well settled. No reasons have been vouchsafed by the petitioner before the Provident Fund Commissioner for not appearing on the scheduled date, despite acknowledgement of the notice dated 17-07-2003. The proceedings dated 05-09-2003 cannot, therefore, be held to have been in violation of the principles of natural justice.

The powers of the CBT under the second proviso to Section 14B of the Act are powers granted by the Statute to exercise discretion to reduce or waive

damages levied under Section 14B of the Act and in relation to a specified establishment. Such an establishment must be a sick industrial company and in respect of which a scheme for rehabilitation has been sanctioned by the BIFR. Admittedly, the petitioner's application for sanction of a scheme is still pending with the BIFR. Neither on the date of its representation to the CBT for waiver nor even today has a scheme for rehabilitation of the petitioner industry been sanctioned. The petitioner, therefore, does not belong to the class of 'industry' in respect of which the discretion of the CBT consecrated by the second proviso to Section 14B of the Act, is applicable.

Having regard to the nature of the power conferred on the CBT under the above dispensation, it appears more in the nature of an administrative discretionary power rather than a quasi-judicial dispensation. Therefore, the representation of an applicant for exercise of the discretion of waiver should be comprehensive to enable consideration of such representation without a further process of hearing or submissions later. All aspects which an applicant wants to submit in justification of his/her/its plea for waiver of the damages must comprehensively be included in any representation. The second proviso to Section 14B of the Act does not, in the considered view of this court, postulate an elaborate quasi-judicial procedure and the CBT is well within its power to consider the representation on any available material and take a decision in accordance with the spectrum of the discretion available to it. In any event, as the petitioner does not fall within the class of 'industrial companies' in respect of which the discretion could be exercised by the CBT under the second proviso to Section 14B of the Act, the decision of the CBT rejecting the petitioner's representation suffers from no infirmity warranting interference.

For the reasons alike recorded in the context of the CBT's order rejecting the petitioner's representation, there appears no infirmity in the order of the Employees' Provident Fund Appellate Tribunal and the reasons recorded by it for rejecting the appeal are germane, rational and adequate.

No interference is called for. There are no merits. The writ petition is, accordingly, dismissed. No costs.

GODA RAGHURAM, J

Dated: 16-08-2005

Pvks/*

Note: LR copy to be marked: Yes.